

Remarks

The Office Action mailed March 2, 2011 has been received and reviewed. Claims 1, 14, 18, 26, and 33, having been amended, the pending claims are claims 1-4, 6-8, 14-24, 26-31, 33-35, 41-43, and 47-53. Reconsideration and withdrawal of the rejections are respectfully requested.

Claims 1, 14, 18, 26, and 33 have been amended to recite “amino acids 1 – 3011.” Support for this amendment may be found in the specification at, for instance, Figure 13 and the brief description of Figure 13 at page 11, lines 23-24; and page 17, line 21 through page 18, line 22. It is Applicant’s position that this amendment does not limit the scope of the claims.

Information Disclosure Statement

A 1449 form was submitted by Applicant on December 23, 2010. Thus, Applicant submitted this 1449 form before the present Final Office Action, and Applicant paid the correct \$180 fee under 37 C.F.R. §§1.97(c) and 1.17(p) for consideration of the 1449 form. A copy of the 1449 form was not initialed as having been considered and returned to Applicant.

Applicant respectfully requests that the 1449 form submitted on December 23, 2010 be considered, initialed by the Examiner, and returned with the next official communication. For the Examiner’s convenience, a copy of the 1449 form, the documents cited therein, and the Supplemental Information Disclosure Statement are included with the present reply.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claims 1-5, 6-8, 14-24, 26-31, 33-35, 41-43, and 47-53 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. This rejection is respectfully traversed. In addition to the remarks made by Applicant’s representatives in earlier replies, consideration of the following remarks is requested.

MPEP §2173 sets forth the purposes of the requirements of 35 U.S.C. §112, second paragraph:

The primary purpose of this requirement of definiteness of claim language is to ensure that the scope of the claims is clear so the public is informed of the boundaries of what constitutes infringement of the patent. A secondary purpose is to provide a clear measure of what applicants regard as the invention so that it can be determined whether the claimed invention meets all the criteria for patentability[.]

M.P.E.P. §2173.02 reinforces the primary purpose of 35 U.S.C. §112, second paragraph, that is set forth immediately above:

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent. (emphasis added).

At paragraph 4 of the Office Action the Examiner states that the claimed polypeptide can be longer than SEQ ID NO:2. Applicant agrees, as the phrase “wherein the polypeptide comprises an amino acid sequence having . . .” clearly indicates that other amino acids may be present. The Examiner also requests specifying whether the “numeric number” of the amino acid is relative to the starting position of SEQ ID NO:2. With all due respect to the Examiner, the meaning of the phrase “numeric number” is unclear. Nonetheless, in an effort to further prosecution, the independent claims have been amended to recite “wherein the polypeptide comprises an amino acid sequence having at least about 95% identity to amino acids 1 – 3011 of SEQ ID NO:2.” The sequence of SEQ ID NO:2 as shown in Figure 13 has 3011 amino acids.

Reconsideration and withdrawal of the present rejection is respectfully requested.

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Summary

It is respectfully submitted that the pending claims 1-4, 6-8, 14-24, 26-31, 33-35, 41-43, and 47-53 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives at the telephone number listed below if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted via the U.S. Patent and Trademark Office electronic filing system in accordance with 37 CFR §1.6(a)(4) to the Patent and Trademark Office addressed to the Commissioner for Patents, Mail Stop AF, P.O. Box 1450, Alexandria, VA 22313-1450, on this 2nd day of May, 2011.

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